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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,988	12/19/2001	Thomas Harold Roessler	KCC-15,369	3706

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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/024,988		ROESSLER ET AL.	
	Examiner		Art Unit	
	Jeff H. Aftergut		1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,14,15,18-21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,14,15,18-21 and 23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-6-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 4, 9, 15, 18-21, 23, 24-33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over PCT WO 95/19258 (newly cited).

PCT '258 suggested that it was known at the time the invention was made to form a stretch activated elastic composite useful for the manufacture of a disposable absorbent article. The reference suggested that one skilled in the art would have activated the stretch activated material automatically when the elastic composite attached to the final product was stretched upon wearing (page 4, lines 35-36). The reference stated that the composite was formed from an elastic sheet which was bonded to a nonwoven fabric. The nonwoven fabric had an elongatability which followed the action of the elastic sheet when they are combined with each other, see page 8, lines 3-4. additionally, note that the nonwoven fabric was stated to have an elastic limit (a point at which it loses its ability to return to its original length) and that the reference suggested that it was known to provide the stretch activated composite elastic such that

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it was stretched and then returned to its original length, see page 11, lines 19-22. the reference suggested that the stretch activated composite material would have been suitable for waist elastics, leg elastic surrounding leg holes and expansive elastics for elastically contracting and stretching over an area of a diaper, page 12, lines 19-22. Figure 17 illustrates the use of the elastic composite material in a disposable absorbent article. As described in example 1, the elastic sheet material is attached to the nonwoven material in a flat state. It should be noted that there is no puckering of the nonwoven sheet prior to attachment of the elastic thereto.

Additionally, as described in the abstract of the disclosure, the reference suggested that the bonding took place while the elastic was in an unstretched state to the unelongated nonwoven sheets. The reference thus taught all of the features of the claim, as it provided a precursor web of nonwoven material which was elongatable from a first dimension to a second dimension without permanent deformation of the web (prior to reaching the elastic limit of the nonwoven), affixing an untensioned elastic sheet material to the precursor web while the webs are in a generally flat state wherein the elastic sheet material is an "active" elastic material and producing a garment (a diaper or a pant) from the precursor web with the elastic material without permanent deformation of the precursor web subsequent to the affixing of the elastic (as the wearer would have stretched the elastic for the first time in the operation).

With regard to the various dependent claims, applicant is advised that the reference suggested that a nonwoven material was useful as the precursor web. Additionally, the reference suggested that one skilled in the art would have utilized the elastics for both the waist portion and the legholes of the undergarment and/or diaper manufactured from the same. The reference suggested that one skilled in the art would have manufactured a pant type article from the stretch

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activatable material and one skilled in the art would have understood as depicted in Figure 17.

The applicant is advised that one skilled in the art would have understood that the pant arrangement in Figure 17 included the elastic composite material disposed about the exterior of the assembly (the backsheet would have been disposed about the exterior). The reference additionally stated that the material would have been useful for waist band and leg cuff materials and one skilled in the art would have understood that the elastics were typically applied to the backsheet and/or topsheet under these circumstances. Additionally, the applicant is advised that the reference suggested that the elastics would have been sandwiched between two nonwoven sheets. Under these conditions one skilled in the art would have understood that the nonwoven webs would have been the topsheet and backsheet materials in the undergarment of Figure 17. with respect to the various degrees of elasticity provided in the finished assembly, it should be noted that the reference suggested that the nonwoven have at least 100% elongation and the elastic clearly had the same.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-11, 15, 18-21, 23-33 rejected under 35 U.S.C. 103(a) as being unpatentable over PCT WO 95/19258 in view of E.P. 650,714.

While the reference to PCT '258 suggested the overall operation, the reference was silent as to the specific use of the elastic material on the backsheet or topsheet of the assembly.

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However, it was known at the time the invention was made to assemble an untensioned elastic onto a backsheet or topsheet material and then later activated the same via stretching as suggested by E.P. '714. more specifically, applicant is referred to column 6, lines 7-49 and in particular lines 9-13 and lines 31-39 where the reference to E.P. '714 suggested that the elastic composite would have been useful as topsheet or backsheet material as well as useful in the formation of leg cuffs and leg elastic as well as waist elastic in a diaper. One skilled in the art would have understood that when used as a backsheet material the precursor web material would have been a backsheet material and likewise when used as a topsheet material the precursor web would have been a topsheet material. additionally, it should be noted that the reference suggested that the elastic was activated by stretching after attachment to the substrate (the topsheet or backsheet precursor web) in much the same manner that PCT '258 suggested that the material would have been activated. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of PCT '258 to provide an elastic backsheet or topsheet material as suggested was desirable with the application of stretch activated elastic (which was applied in an untensioned state) as suggested by E.P. 650,714 in the manufacture of a disposable diaper or undergarment.

While the references to E.P. 650,714 did not expressly state the make up of the topsheet material or backsheet materials, the specified materials of the claims are taken as conventional in the art. The applicant is advised that the state of the prior art is such that one skilled in the art at the time the invention was made would have known what materials were included for topsheets and backsheets and applicant has listed none but that which is commonplace to the art. The specified materials of the topsheet and backsheet are taken as conventional and the use of such

commonplace materials for the topsheet and backsheet of the disposable absorbent article would have been within the purview of the ordinary artisan. It should be noted that applicant was advised that these materials were conventional materials in the art in the first Office action dated 12-3-03 and as set forth in the final rejection dated 4-20-04 applicant was advised that the lack of mention regarding the same was an agreement (admittance) with the Office position that these materials were in fact conventional in the art.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 5 further taken with any one of Roessler et al or Wideman.

While the references as set forth above in paragraph 5 suggested that those skilled in the art at the time the invention was made would have incorporated the elastic material in the leg elastics, the references failed to teach or suggest the use of multiple elastics in this region of the disposable absorbent wherein the legs were disposed. The references additionally failed to teach that those skilled in the art at the time the invention was made would have tensioned the elastics to differing degrees in this region of the disposable garments. However, the ordinary artisan in the manufacture of a disposable absorbent article would have known to incorporate multiple elastics in the absorbent article wherein the elastics were provided with different degrees of tension therein as evidenced by either one of Roessler et al or Wideman. The reference to either one of Wideman or Roessler et al suggested that it was known at the time the invention was made to incorporate plural elastic members in a disposable absorbent article and additionally that it was known to provide the elastics with different degrees of tension in the absorbent article as desired (see column 6, lines 28-35 of Roessler et al and column 5, lines 22-47 of Wideman and Figure 2). One skilled in the art would have readily appreciated that having one elastic member

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under no tension and another under low tension would have resulted in an assembly wherein the elastics had differential tension in the final assembly. The particular degree of tensioning applied to the elastics would have been determined through routine experimentation in order to achieve the desired degree of elasticity in the absorbent article and required fit in the leghole area, for example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate plural elastics in the region of the disposable absorbent article wherein the elastics were under different tensions as suggested by either one of Roessler et al or Wideman in the process of making a disposable absorbent article as set forth above in paragraph 5.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1, 3-11, 14-15, 18-21, 23-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In each of the independent claims the applicant has amended the claim to recite that the elastic is "untensioned and active" elastic. However, the original disclosure does not provide basis for the language "active elastic" and it is not understood what the exact scope of the language is. Applicant has amended the claim in an effort to define over a heat shrinkable elastic

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material, however the disclosure does not support the term “active” as the elastic material which was defined in the specification included heat shrinkable elastics, see page 10, lines 6-11. It is suggested that applicant remove the term “active” from the claims. It should be noted that in doing so, previously applied prior art may resurface in the rejection of the claims (as the claims have been rejected based upon the presented language).

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 3-11, 14-15, 18-21, 23-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant has added the term “active” in all of the independent claims to define the elastic material, however the exact scope of the term is not clear from the original disclosure as the elastic materials defined as useful in the invention included heat shrinkable elastics which are known to be inactive until they are activated via heating. As such the exact scope of the claims is not deemed to be clear and concise. It is suggested in each instance that the term “active” be deleted.

Response to Arguments

11. Applicant's arguments with respect to claims 1, 3-11, 14-15, 18-21, 23-33 have been considered but are moot in view of the new ground(s) of rejection.

The applicant is advised the newly cited reference to PCT ‘258 clearly suggested that one skilled in the art would have formed a stretch activated elastic wherein an elastic sheet material

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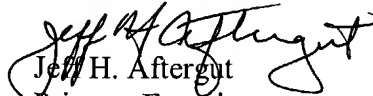
was attached to a nonwoven under no tension and the nonwoven web was capable of elongation and return to its original condition (prior to reaching its elastic limit) as discussed above. As such, the reference to Baird has been removed from the rejection and the newly cited reference to PCT '258 has been applied.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
August 26, 2004